

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Federal Deposit Insurance Corporation,)
as Receiver for Heritage Bank,)

Plaintiff,)

v.)

John M. Saphir, Patrick G. Fanning,)
Stephen L. Faydash, William E. Hetler,)
Thomas Jelinek, Lori A. Moseley,)
Stephen Anthony, Jerry C. Brucer,)
James K. Champion, Andrew B. Nathan)
And Mary C. Mills,)

Defendant.)

Case No. 10-CV-7009

Honorable Judge Rebecca Pallmeyer

**DEFENDANT JERRY C. BRUCER'S MOTION TO DISMISS
THE PLAINTIFF'S COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

The Defendant, Jerry C. Brucer (herein "Mr. Brucer"), by his attorneys, Regas, Frezados & Dallas LLP, in support of his motion to dismiss the Complaint of the Plaintiff, Federal Deposit Insurance Corporation as receiver for Heritage Bank (herein "FDIC"), pursuant to Federal Rule of Civil Procedure 12(b)(6), states as follows:

1. The FDIC has filed a Complaint against Mr. Brucer alleging claims of negligence under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, negligence under Illinois law and breach of fiduciary duty.

2. All three claims against Mr. Brucer are legally and factually identical.

3. All three claims relate to decisions allegedly made by Mr. Brucer as a director of Heritage Bank (herein "Bank").

4. Under the business judgment rule, directors who exercise due care in obtaining material information relevant to their decisions will not be held liable for honest errors in judgment absent allegations of fraud, illegality or bad faith. *Stamp v. Touche Ross & Co.*, 263 Ill.App.3d 1010, 1015 (1st Dist. 1993).

4. All three claims fail to allege a lack of information, fraud, illegality or bad faith on the part of Mr. Brucer, and therefore these claims are barred by the business judgment rule.

5. Federal Rule of Civil Procedure 12(b)(6) requires the dismissal of a complaint that fails to state a claim upon which relief may be granted.

6. Mr. Brucer further submits a memorandum in support of the preceding statements.

WHEREFORE, Mr. Brucer requests that this Court dismiss the Complaint of the FDIC with prejudice and grant Mr. Brucer such further and other relief as this court deems just or equitable.

Regas, Frezados & Dallas LLP

By: /s William D. Dallas
One of the attorneys for Jerry C. Brucer

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